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### Title 73 Chapter 22: Geothermal Resource Conservation - 1989 Volume 7C

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## ARTICLE V

## Ratification and Amendment

Each party acknowledges that in order for this Compact to constitute a final and permanent settlement of tribal reserved water rights, this Compact must be ratified by the United States, the State of Utah, and the Ute Indian Tribe through referendum of the Tribe's membership. The parties shall use their best efforts to have the ratifications undertaken as expeditiously as possible. The parties hereto agree that the terms of this Compact have the force and effect of law and agree to adopt all statutes, regulations and ordinances that are, or may be, necessary to harmonize existing statutes, regulations and ordinances with this Compact, and agree that this Compact may be included within any general stream adjudication. The Secretary of the Interior is authorized to implement this Compact by appropriate regulations.

DATED: \_\_\_\_\_

UTE INDIAN TRIBE

By \_\_\_\_\_

STATE OF UTAH

By \_\_\_\_\_

UNITED STATES OF AMERICA

By \_\_\_\_\_

History: L. 1980, ch. 74, § 2.

## CHAPTER 22

# GEOTHERMAL RESOURCE CONSERVATION

Section		Section	
73-22-1.	Short title.		wells — Surety bonds — Inspection.
73-22-2.	Legislative findings.		
73-22-3.	Definitions.	73-22-7.	Cooperative or unit operation of geothermal area — Order — Plan of operation — Approval of owners — Amendment.
73-22-4.	Ownership of geothermal resource — Lands subject to chapter.		
73-22-5.	Jurisdiction of division — Hearings — Subpoena power — Restraining violations — Actions for damages against violators unaffected.	73-22-8.	Geothermal fluids as water resource — Application for appropriation required — Priorities.
		73-22-9.	Rights to geothermal resources.
73-22-6.	Information required concerning resource development — Confidentiality — Regulation of	73-22-10.	Judicial review of division actions — Falsification or omission of filings as misdemeanor — Limitation of actions.

### 73-22-1. Short title.

This chapter shall be known and may be cited as the "Utah Geothermal Resource Conservation Act."

History: C. 1953, 73-21-1, enacted by L. 1981, ch. 188, § 1.

#### COLLATERAL REFERENCES

Utah Law Review. — Utah Legislative Survey — 1981, 1982 Utah L. Rev. 125, 168.

### 73-22-2. Legislative findings.

It is declared to be in the public interest to foster, encourage, and promote the discovery, development, production, utilization, and disposal of geothermal resources in the State of Utah in such manner as will prevent waste, protect correlative rights, and safeguard the natural environment and the public welfare; to authorize, encourage, and provide for the development and operation of geothermal resource properties in such manner that the maximum ultimate economic recovery of geothermal resources may be obtained through, among other things, agreements for cooperative development, production, injection, and pressure maintenance operations.

History: C. 1953, 73-21-2, enacted by L. 1981, ch. 188, § 2.

### 73-22-3. Definitions.

As used in this chapter:

(1) "Correlative rights" mean the rights of each geothermal owner in a geothermal area to produce without waste his just and equitable share of the geothermal resource underlying the geothermal area.

(2) "Division" means the Division of Water Rights, Department of Natural Resources.

(3) "Geothermal area" means the general land area which is underlain or reasonably appears to be underlain by geothermal resources.

(4) "Geothermal fluid" means water and steam at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(5) "Geothermal resource" means: (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and (b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium. Geothermal resource does not include geothermal fluids.

(6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation containing geothermal resources.

(7) "Material medium" means geothermal fluids, or water and other substances artificially introduced into a geothermal system to serve as a heat transfer medium.

(8) "Operator" means any person drilling, maintaining, operating, producing, or in control of any well.

(9) "Owner" means a person who has the right to drill into, produce, and make use of the geothermal resource.

(10) "Person" means any individual, business entity (corporate or otherwise), or political subdivision of this or any other state.

(11) "Waste" means any inefficient, excessive, or improper production, use, or dissipation of geothermal resources. Wasteful practices include, but are not limited to: (a) transporting or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources; or (b) locating, spacing, constructing, equipping, operating, producing, or venting of any well in a manner that results or tends to result in unnecessary surface loss or in reducing the ultimate economic recovery of geothermal resources.

(12) "Well" means any well drilled, converted, or reactivated for the discovery, testing, production, or subsurface injection of geothermal resources.

**History:** C. 1953, 73-21-3, enacted by L. 1981, ch. 188, § 3.

**Cross-References.** — Division of Water Rights, § 73-2-1.1.

#### **73-22-4. Ownership of geothermal resource — Lands subject to chapter.**

(1) Ownership of a geothermal resource derives from an interest in land and not from an appropriative right to geothermal fluids.

(2) This chapter shall apply to all lands in the State of Utah, including federal and Indian lands to the extent allowed by law. When these lands are committed to a unit agreement involving lands subject to federal or Indian jurisdiction, the division may, with respect to the unit agreement, deem this chapter complied with if the unit operations are regulated by the United States and the division finds that conservation of geothermal resources and prevention of waste are accomplished under the unit agreement.

**History:** C. 1953, 73-21-4, enacted by L. 1981, ch. 188, § 4.

#### **73-22-5. Jurisdiction of division — Hearings — Subpoena power — Restraining violations — Actions for damages against violators unaffected.**

(1) The division has jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and may enact, issue, and enforce necessary rules and orders to carry out the requirements of this chapter.

(2) (a) Any affected person may apply for a hearing before the division, or the division may initiate proceedings upon any question relating to the administration of this chapter by following the procedures and requirements of Chapter 46b, Title 63.

(b) The Division of Water Rights shall comply with the procedures and requirements of Chapter 46b, Title 63, in its adjudicative proceedings.

(3) The division shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(4) (a) If any person fails or refuses to comply with a subpoena issued by the division, or if any witness fails or refuses to testify about any matter regarding which he may be interrogated, the division may petition any district court in the state to issue an order compelling the person to:

- (i) comply with the subpoena and attend before the division;
  - (ii) produce any records, books, and documents covered by the subpoena; or
  - (iii) to give testimony.
- (b) The court may punish failure to comply with the order as contempt.
- (5) (a) Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order made under this chapter, the division may file suit in the name of the state to restrain that person from continuing the violation or from carrying out the threat of violation.
- (b) Venue for the action is in the district court in the county where any defendant resides or in the county where the violation is alleged to have occurred.
- (6) (a) Nothing in this chapter, no suit by or against the division, and no violation charged or asserted against any person under this chapter, or any rule or order issued under it, shall impair, abridge, or delay any cause of action for damages that any person may have or assert against any person violating this chapter, or any rule or order issued under it.
- (b) Any person so damaged by the violation may sue for and recover whatever damages that he is otherwise entitled to receive.

**History:** C. 1953, 73-21-5, enacted by L. 1981, ch. 188, § 5; 1987, ch. 161, § 299.

**Amendment Notes.** — The 1987 amendment, effective January 1, 1988, designated the previously undesignated provisions of Subsections (2) and (4) through (6); substituted "rules" for "rules and regulations" throughout the section; in Subsection (2)(a), substituted "by following the procedures and requirement of Chapter 46b, Title 63" for "and jurisdiction is conferred upon the division to hear and determine the same and enter its rule, regula-

tion, or order with respect to the matter"; inserted the present Subsection (2)(b); in Subsection (4)(b), deleted "as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify in the court" from the end; in Subsection (5)(a), substituted "to restrain that person from continuing the violation or from carrying out the threat of violation" for "against that person" at the end; and made minor changes in phraseology and punctuation throughout the section.

## **73-22-6. Information required concerning resource development — Confidentiality — Regulation of wells — Surety bonds — Inspection.**

- (1) The division shall have authority to require:
- (a) Identification of the location and ownership of all wells and producing geothermal leases.
  - (b) Filing with the division of a notice of intent to drill, redrill, deepen, permanently alter the casing of, or abandon any well. Approval of the notice of intent must be obtained from the division prior to commencement of operations.
  - (c) Keeping of well logs and filing true and correct copies with the division. These records are public records when filed with the division, unless the owner or operator requests, in writing, that the records be held confidential. The period of confidentiality shall be established by the division, not to exceed five years from the date of production or injection for other than testing purposes or five years from the date of abandonment, whichever occurs first, as determined by the division. Well records held confidential by the division are open to inspection by those persons autho-



rized in writing by the owner or operator. Confidential status shall not restrict inspection by state officers charged with regulating well operations or by authorized officials of the Utah State Tax Commission for purposes of tax assessment.

(d) The spacing, drilling, casing, testing, operating, producing, and abandonment of wells so as to prevent: (i) geothermal resources, water, gases, or other fluids from escaping into strata other than the strata in which they are found (unless in accordance with a subsurface injection program approved by the division); (ii) pollution of surface and groundwater; (iii) premature cooling of any geothermal system by water encroachment or otherwise which tends to reduce the ultimate economic recovery of the geothermal resources; (iv) blowouts, cave-ins, and seepage; and (v) unreasonable disturbance or injury to neighboring properties, prior water rights, human life, health, and the environment.

(e) The operator to file cash or individual surety bonds with the division for each new well drilled and each abandoned well redrilled. The amount of surety required shall be determined by the division. In lieu of bonds for separate wells, the operator may file a blanket cash or individual surety bond in an amount set by the division to cover all the operator's drilling, redrilling, deepening, maintenance, or abandonment activities for wells in the state. Bonds filed with the division shall be executed by the operator, as principal, conditioned on compliance with division regulations in drilling, redrilling, deepening, maintaining, or abandoning any well or wells covered by the bond and shall secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond.

(f) The geothermal owner or operator to measure geothermal production according to standards set by the division and maintain complete and accurate production records. The records, or certified copies of them, shall be preserved on file by the owner or operator for a period of five years and shall be available for examination by the division at all reasonable times.

(g) Filing with the division any other reasonable reports which it prescribes regarding geothermal operations within the state.

(2) Any bond filed with the division in conformance with this chapter may, with the consent of the division, be terminated and canceled and the surety be relieved of all obligations under it when the well or wells covered by the bond have been properly abandoned or another valid bond has been substituted for it.

(3) The division may enter onto private or public land at any time to inspect any well or geothermal resource development project to determine if the well or project is being constructed, operated, or maintained according to any applicable permits or to determine if the construction, operation, or maintenance of the well or project may involve an unreasonable risk to life, health, property, the environment or subsurface, surface, or atmospheric resources.

**History:** C. 1953, 73-21-6, enacted by L. 1981, ch. 188, § 6.

**73-22-7. Cooperative or unit operation of geothermal area — Order — Plan of operation — Approval of owners — Amendment.**

(1) The agency or any affected person may commence an adjudicative proceeding to consider the need for cooperative or unit operation of a geothermal area.

(2) The division shall order the cooperative or unit operation of part or all of a geothermal area if the division finds that:

(a) a developable resource exists; and

(b) that this operation is reasonably necessary to prevent waste, to protect correlative rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic recovery of geothermal resources.

(3) The division's order for cooperative or unit operations shall be upon terms and conditions that are just and reasonable and satisfy the requirements of Subsection (2).

(4) An order by the division for unit operations shall prescribe a plan, including:

(a) A description of the geothermal area to be unit operated, termed the unit area.

(b) A statement of the nature of the operations contemplated, the time they will commence, and the manner and circumstances under which unit operations shall terminate.

(c) An allocation to the separately-owned tracts in the unit area of the geothermal resources produced and of the costs incurred in unit operations. The allocations shall be in accord with the agreement, if any, of the affected parties. If there is no agreement, the division shall determine the allocations from evidence introduced at a hearing before the division. Production shall be allocated in proportion to the relative value that each tract bears to the value of all tracts in the unit area. The acreage of each tract in proportion to the total unit acreage shall be the measure of relative value, unless the division finds after public hearing that another method is likely to result in a more equitable allocation and protection of correlative rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place of use, and productivity are among the factors that may be considered in evaluating other methods. The method for allocating production in unit operations shall be revised, if, after a hearing, the division finds that the revised method is likely to result in a more equitable allocation and protection of correlative rights. Any affected person may file a request for agency action to consider adoption of a revised allocation method, but the request may not be made until three years after the initial order by the division or at less than two-year intervals after that. Upon receipt of a request for consideration of a revised allocation method, the division shall hold a hearing.

(d) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for each item shall be determined by the owners of the unit area (not including royalty owners). If the owners of the unit area

are unable to agree upon the amount of the charges or to agree upon the correctness of the charges, any affected party may file a request for agency action. Upon receipt of the request, the division shall hold a hearing to determine them. The net amount charged against the owner of a separately-owned tract shall be considered an expense of unit operation chargeable against that tract. The adjustments provided for in this subsection may be treated separately and handled by agreements separate from the unitization agreement.

(e) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately-owned tracts and how these costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operation charged to that owner, or the interest of that owner, may be sold and the proceeds applied to the payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's geothermal rights and his share of unitized production to secure the payment of the owner's proportionate part of the cost of developing and operating the unit area. This lien may be established and enforced in the same manner as provided by Sections 38-1-8 through 38-1-26. For these purposes any nonconsenting owner is considered to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, does not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations.

(f) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for this service payable out of that person's share of the production.

(g) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of that person.

(h) Any additional provisions that are necessary to carry on the unit operations.

(5) (a) No order of the division providing for unit operations is effective unless and until the division finds that the plan for unit operations prescribed by the division has been approved in writing by:

(i) those persons, who under the division's order, will be required to pay 66% of the costs of the unit operation; and

(ii) the owners of 66% of the production or proceeds of the unit operation that are free of costs, such as royalties, overriding royalties, and production payments.

(b) If the persons owning the required percentage of interest in the unit area do not approve the plan within six months from the date on which the order is made, the order is ineffective and shall be revoked by the division unless for good cause shown the division extends this time.

(6) (a) An order providing for unit operations may be amended by an order of the division in the same manner and subject to the same conditions as an original order for unit operations.



(b) If this amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments, and other interests that are free of costs is required.

(c) Production allocation may be amended only by following the procedures of Subsection (4)(c).

(7) (a) All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are considered for all purposes to be the conduct of those operations upon each separately-owned tract in the unit by the several owners of tracts in the unit.

(b) The portions of the unit production allocated to a separately-owned tract in a unit area are, when produced, considered for all purposes to have been actually produced from that tract by a well drilled on it. Good faith operations conducted pursuant to an order of the division providing for unit operations constitutes a complete defense to any suit alleging breach of lease or of contractual obligations covering lands in the unit area to the extent that compliance with these obligations cannot be had because of the order of the division.

(8) The portion of the unit production allocated to any tract, and the proceeds from the sale of this production, are the property and income of the several persons to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.

(9) (a) Except to the extent that the parties affected so agree, and as provided in Subsection (4)(e), no order providing for unit operations may be construed to result in a transfer of all or any part of the title of any person to the geothermal resource rights in any tract in the unit area.

(b) All property, whether real or personal, that is acquired in the conduct of unit operations, is acquired for the account of the owners within the unit area and is the property of those owners in the proportion that the expenses of unit operations are charged.

**History:** C. 1953, 73-21-7, enacted by L. 1981, ch. 188, § 7; 1987, ch. 161, § 300; 1988, ch. 72, § 31.

**Amendment Notes.** — The 1987 amendment, effective January 1, 1988, in Subsection (1), substituted "if" for "the division upon its own motion may hold, and upon the application of" and made minor changes in phraseology and punctuation throughout the section.

The 1988 amendment, effective April 25, 1988, substituted "The agency or any affected person may commence an adjudicative proceeding" for "If any affected person files a request for agency action" in Subsection (1) and made two minor stylistic changes in Subsection (4)(c).

## **73-22-8. Geothermal fluids as water resource — Application for appropriation required — Priorities.**

(1) Geothermal fluids are deemed to be a special kind of underground water resource, related to and potentially affecting other water resources of the state. The utilization or distribution for their thermal content and subsurface injection or disposal of same shall constitute a beneficial use of the water resources of the state.

(2) (a) Geothermal owners shall, prior to the commencement of, or increase in, production from a well or group of wells to be operated in concert, file an application with the division to appropriate such geothermal fluids as

will be extracted from the well or group of wells. Publication of applications shall be made as provided in Section 73-3-6, and protests may be filed as provided in Section 73-3-7. The division shall approve an application if it finds that the applicant is a geothermal owner and that the proposed extraction of geothermal fluids will not impair existing rights to the waters of the state.

(b) The division may grant the quantity of an application on a provisional basis, to be finalized upon stabilization of well production. Flow testing of a discovery well shall not require an application to appropriate geothermal fluids.

(3) The date of an application to appropriate geothermal fluids, when approved by the division, shall be the priority date as between the geothermal owner and the owners of rights to water other than geothermal fluids. No priorities shall be created among geothermal owners by the approval of an application to appropriate geothermal fluids.

**History:** C. 1953, 73-21-8, enacted by L. 1981, ch. 188, § 8.

### **73-22-9. Rights to geothermal resources.**

Rights to geothermal resources and to geothermal fluids to be extracted in the course of production of geothermal resources acquired under Section 73-22-8 shall be based on the principle of correlative rights.

**History:** C. 1953, 73-21-9, enacted by L. 1981, ch. 188, § 9.

### **73-22-10. Judicial review of division actions — Falsification or omission of filings as misdemeanor — Limitation of actions.**

(1) (a) Any person aggrieved by any order issued under this chapter may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceedings is in the district court of Salt Lake County, or in the district court of the county in which the complaining person resides.

(2) An action or appeal involving any provision of this chapter, or a rule or order issued under it shall be determined as expeditiously as possible.

(3) Any person who, for the purpose of evading this chapter or any order of the division issued under it, makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by any order issued under it, or omits or causes to be omitted from the report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by an order, or removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum, is guilty of a class A misdemeanor.

(4) No suit, action, or other proceeding based upon a violation of this chapter or any order of the division issued under it may be begun or maintained unless the action is begun within two years from the date of the alleged violation.

**History:** C. 1953, 73-21-10, enacted by L. 1981, ch. 188, § 10; 1987, ch. 161, § 301.

**Amendment Notes.** — The 1987 amendment, effective January 1, 1988, rewrote the provisions of this section to such an extent that a detailed analysis is impracticable.

**Severability Clauses.** — Section 11 of Laws

1981, ch. 188 provided: "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

**Cross-References.** — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

## CHAPTER 23

# WEST DESERT PUMPING PROJECT

### Section

73-23-1. Legislative findings.

73-23-2. Appropriation — Projects authorized.

73-23-3. Duties and powers of Division of Water Resources.

73-23-4. Legislative findings.

### Section

73-23-5. Interim committee study responsibilities of Division of Water Resources.

73-23-6. Use of certain remaining construction funds.

### 73-23-1. Legislative findings.

(1) The Legislature finds that the level of the Great Salt Lake has risen sharply in recent years due to extreme weather conditions. The high level of the lake has caused extraordinary flooding conditions resulting in substantial damage to public and private facilities. Those conditions pose a threat to life, health, and property, and in particular may result in extensive damage to public lands, major transportation routes, and other public facilities.

(2) The Legislature finds that some of the existing and anticipated extraordinary flooding conditions can be alleviated by construction of the West Desert Pumping Project.

(3) The Legislature declares it is in the public interest and a public purpose to construct the West Desert Pumping Project as a means of counteracting the threat to life, health, and property in general and to public lands, major transportation routes, and other public facilities in particular.

(4) The Legislature finds that all activities engaged in under authority of this chapter are governmental functions and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

**History:** C. 1953, 73-23-1, enacted by L. 1986 (2nd S.S.), ch. 6, § 1.

**Effective Dates.** — Laws 1986 (2nd S.S.),

ch. 6, § 3 makes the act effective on May 23, 1986.

### COLLATERAL REFERENCES

**Journal of Energy Law and Policy.** — Comment, The Only Way to Manage a Desert: Utah's Liability Immunity for Flood Control, 8 J. Energy L. & Pol'y 95 (1987).

Settling Flood Hazard Conflict: The Utah Lake and Jordan River Experience, 8 J. Energy L. & Pol'y 199 (1988).

**A.L.R.** — Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332 (2)(C)) in cases involving water and waterworks projects, 67 A.L.R. Fed. 54.